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(91)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

SINGLE BENCH: HON'BLE SHRI S.R. NAYAK, CJ.

WRIT PETITION NO.1688 OF 2006.

PETITIONER Satish Kumar Agrawal
Aged about 40 years, S/o. Shri Devraj Agrawal, R/o. Village Dumaria, Post Patna District Korea (Chhattisgarh)

Vs.

RESPONDENTS

1. State of Chhattisgarh
Through the Secretary, Department of Food & Civil Supplies, D.K.S. Bhawan Mantralaya, Raipur (Chhattisgarh)

2. Chhattisgarh State Civil Supplies Corporation Ltd. Through Managing Directior, Bal Ashram Parisar, Kachahari Chowk, Raipur (C.G.)

3. Depo Manager, Chhattisgarh State Civil Supplies Corporation Ltd., Surajpur, District Sarguja. (C.G.).

Present: Shri Prateek Sharma, learned counsel for the petitioner.
Shri Prashant Mishra, learned Addl. Advocate with Shri Utkarsh Verma, learned Dy. Govt. Advocate for respondents.

ORAL ORDER
(Passed on 4th May, 2006)

The petitioner is a resident of Korea District in the State of Chhattisgarh. He claims to be a contractor by profession. It is stated by him that he has had the experience of executing Government contracts.

(2) In this writ petition, the petitioner has assailed the validity of two conditions, namely, condition No.1.16 and condition No.4.7 incorporated in the tender notification calling for applications from the eligible persons for award of the contract of transportation of foodgrains and other essential commodities to distribution centers by contending that those conditions are arbitrary, unreasonable and violative of Article 14 of the Constitution of India.

(3) The facts of the case, in brief, are as follows:

Presently, the transportation and distribution of foodgrains to persons living below poverty line is being monitored by the Hon'ble Supreme Court in the case of **PSUL Vs. Union of India.** The Chhattisgarh State Civil Supplies Corporation Ltd., the 2nd respondent herein, issued tender notification dated 22.02.2006 inviting tenders for the long distance transportation works for the year 2006-07 for supply of foodgrains/sugar/pulse/Bardana from the collection centers/sugar factories/base depots to the distribution centers situated in all over the State. Condition No. 1.16 provides that the contractor must be the resident of the concerned district in which the base depot is situated. Condition No.4.7 provides that the long distance road transportation work known as Home Delivery (Dwar Praday) transportation work is to be given to the contractors who are residents of the concerned district in which the applied base depot is situated. Therefore, residence certificate issued by the prescribed authority of the concerned district must be produced along with the tender documents at the time of submission of the tender by contractors.

(4) The petitioner being a resident of Korea district, it appears , in pursuance of the above tender notification, applied for award of the contract for transportation of the essential commodities within the said district. The grievance of the petitioner is that he also wanted to apply for award of the contract for transportation of essential commodities within Surguja district, but, he could not do so because of the restriction imposed by condition No.1.16 and condition No.4.7 of the tender notification.

(5) Opposing the writ petition, respondents 2 and 3 have filed their return dated 21.04.2006. In the return, condition No.1.16 and condition No.4.7 are sought to be justified mainly by contending that the district managers in view of their past experience suggested to the 2nd respondent that the transporters for the advertised work should be the persons hailing from the concerned district in order to ensure prompt and regular supply of essential commodities to the beneficiaries of the Public Distribution Scheme (PDS) and also in order to check and prevent malpractices, black-marketing and to obviate other difficulties. It is also stated that the impugned conditions are intended to sub-serve the public interest and to systematize the transportation of essential commodities to the beneficiaries smoothly and without difficulties.

(6) I have heard the learned counsel for the parties. Shri Prateek Sharma, learned counsel for the petitioner, with his usual vehemence, would contend that whenever the State and State Authorities, instrumentalities of the State proceed to part with their largesse, the opportunity to apply for largesse should be thrown open to all eligible persons in the public and that is what Article 14 mandates. According to Shri Prateek Sharma, the restrictive conditions – condition Nos.1.16 and 4.7 are violative of the right guaranteed to the petitioner and similarly circumstanced others under Article 14 of the Constitution. In other words, what the learned counsel would contend is that the right to apply and be considered for award of largesse by the 2nd respondent who is a "State" for the purpose of Article 12 of the Constitution cannot be denied to any person on any fanciful and whimsical grounds and that the impugned conditions would not stand the scrutiny of Article 14 postulates.

(7) Shri Prashant Mishra, learned Addl. Advocate General appearing for respondents-authorities, *per contra*, while highlighting on the laudable objectives of the PDS would submit that if the Court were to keep in mind what weighed with the 2nd respondent to prescribe the impugned conditions, it could not be said that the impugned conditions are fanciful and whimsical, but, on the other hand, they are intended to sub-serve the laudable social/public interest, that is to see that the essential commodities should reach the beneficiaries under the PDS promptly and regularly and there should not be any time-lag. It was also pointed out by learned Addl. Advocate General by drawing attention of the Court to the pleadings of the respondents that the 2nd respondent took the decision to incorporate the impugned conditions in the light of the past experience conveyed to the 2nd respondent by district Managers and, therefore, the impugned conditions cannot be condemned as arbitrary and unreasonable. Learned counsel for the petitioner and learned Addl. Advocate General would cite certain decisions in support of their respective submissions.

(8) In reply, Shri Prateek Sharma submitted that the object that the contractor to whom the contract may be awarded shall be readily available within the district for transportation and distribution of essential commodities is otherwise ensured by condition No.1.6 which insists that the contractor should establish an office within the base depot and therefore, there is no good reason to incorporate the impugned conditions in the tender notification.

(9) Having heard learned counsel for the parties, a short question that arises for decision is whether the impugned conditions could be condemned as arbitrary and unreasonable being violative of Article 14 postulates, i.e., reasonableness, fairness and non-arbitrariness.

(10) The law relating to award of contracts by the State, instrumentalities of the State, statutory bodies and other authorities which could be treated as 'State' within the meaning of Arti.12 of the Constitution has been well settled by a catena of decisions of the Supreme Court and High Courts, and to mention few are the decisions of the Hon'ble Supreme Court in **R.D. Shetty V. International Airport Authority**[1], **Fertilizer Corporation Kamgar Union V. Union of India**[2], **Central Excise Vs. Dunlop India Limited**[3], **Tata Cellular Vs. Union of India**[4], **Ramniklal N. Bhutta Vs. State of Maharashtra**[5], **Raunaq International Limited Vs. I.V.R. Construction Limited**[6] and **M/s. Monarch Infrastructure Pvt. Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and others**[7]. The Supreme Court in **Air India Limited Vs. Cochin Int., Airport Ltd. and others**[8], has summarized the principles governing award of contracts in the following words –

> "The award of a contract, whether it is by a private party or by a public body or the State, is essentially, a commercial transaction. In arriving at a commercial decision consideration which are of paramount are commercial considerations. The State can choose its own method to

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1. (1979) 3 SCC 488
2. (1981) 1 SCC 568
3. (1985) 1 SCC 260
4. (1994) 6 SCC 651
5. (1977) 1 SCC 134
6. (1999) 1 SCC 492
7. 2000 (4) Supreme 34
8. 2000 (1) SCALE 346

arrive at a decision. It can fix its own terms of invitation to tender and that it is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer event though it happens to be the highest or the lowest.. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms; standards and procedures laid down by them and cannot depart from them arbitrarily. Through that decision is not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by *mala fides*, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process the Court must exercise its discretionary power under Art.226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene."

(11) However, it is pertinent to notice that since the guarantee of equal protection enshrined in Art. 14 of the Constitution embraces the entire domain of 'State action', it would extend not only when an individual id discriminated in the manner of exercise of his rights or in the matter of imposing liabilities upon him, but also in the manner of granting privileges, e.g., granting licences for entering into any profession or avocation or business, inviting tenders for entering into any business, inviting tenders

for entering into a contract relating to Government business, or issuing quotas, giving jobs and in all these cases, the principle is that there should be no discrimination between one person and another if their position or circumstances is the same. In other words, the State's action must not be arbitrary but must be based on some valid principle which itself must not be irrational or discriminatory. It is well settled that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an action in violation of them. It is true that every activity of the Government has the public element in it and must, therefore, be informed with reason and fair play in action and guided by public interest. It is also true if the Government awards contracts or otherwise deals with its property or grants any other largesse, it would be liable to be tested for its validity on the touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid. The public authority cannot exercise its discretion arbitrarily in the matter of giving contracts to a party on its sweet will and pleasure and at the peril of public interest.

(12) In the premise of the above-noted well settled principles governing award of contracts by the Government, its Authorities, Corporations and statutory bodies, let us have a look at the facts of this case. In the return filed by the respondents 2 and 3, it is stated that condition No.1.16 and condition No.4.7 are incorporated in the tender notification in the light of the feed-back received by the 2nd respondent-Corporation from the district Managers. In other words, the impugned conditions are incorporated in the tender notification, according to the 2nd

respondent, to sub-serve laudable social/public interest, that is to say, the essential commodities should reach the beneficiaries under the PDS promptly and regularly without any impediment and that objective could be achieved without much difficulty only if contract is awarded to the residents of a particular district, because, in view of their familiarity of the local area, roads, the people to be contacted etc. If the impugned conditions are incorporated in the tender notification by the 2nd respondent in view of its experience in the past and to achieve the laudable objectives noted above, those conditions could not be condemned by the Court simply because the impugned conditions exclude a person like the petitioner and similarly circumstanced others from applying for award of such contract outside their district.

(13) The respondents have made a classification for the purpose of awarding contracts – one group consisting of residents of a particular district and the other consisting of non-residents of such district. It is not as if every classification is violative of Article 14 of the Constitution of India. Article 14 prohibits class legislation and not reasonable classification. If the State takes care to reasonably classify persons for its purposes and if it deals equally with all persons belonging to a '*well-defined class*' , it is not open to the charge of denial of equal protection on the ground that the law does not apply to other persons. However, in order to stand the scrutiny of Article 14, a classification made by the State has to fulfill two conditions, namely, (i) that the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group and (ii) that, that differential must have a rational relation to the object sought to be

achieved by the statute or instrument in question. It also needs to be noticed that Article 14 does not insist that a classification should be scientifically perfect or logically complete. In other words, the Court would not interfere unless the classification results in pronounced inequality or is palpably arbitrary. If there is equality and uniformity within each group, the law will not be condemned as discriminative. Since the impugned conditions are challenged as denying equal protection, the question for the Court to consider is not whether the impugned conditions have resulted in inequality, but, whether there is some difference between the two groups which bears a just and reasonable relation to the object to be achieved. It is well settled that mere differentiation or inequality of treatment or inequality of burden does not *per se* amount to discrimination within the inhibition of the equal protection clause embodied in Article 14 of the Constitution. To attract the equal protection clause, it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it does not rest on any rational basis having regard to the object to be achieved. Having regard to the facts of this case, it cannot be said that the classification made by the respondents for the purpose of awarding contract is not founded on any intelligible differential and that it has no relation to the objects sought to be achieved.

(14) Furthermore, it needs to be noticed that the decision of the respondents to award contracts of transporting essential commodities within a particular district only to the residents of that district is a policy decision taken by the respondents in the premise of their past experience and to achieve certain goals already referred to above. The Supreme Court and High Courts repeatedly held that they will not normally interfere

with the policy decision of the Government and Governmental authorities and they must exercise power of judicial review with circumspection. The wisdom in a policy decision of the Government or statutory authorities, as such, is not justiciable unless such policy decision is capricious, arbitrary, whimsical so as to offend Article 14 of the Constitution or any statutory or constitutional provision. The only thing to be seen by the Court when a policy decision is assailed is whether the policy in question is arbitrary or violative of any mandatory provisions of law. In **Tata Iron and steel Co., Ltd. Vs. Union of India**[9], it was held that unless policy decision is inconsistent with Constitution or law, the Court must exercise jurisdiction with circumspection, particularly when the issues that arise for decision are intertwined with policy decision or technical matters. In **Sitaram Co. Vs. Union of India**[10], the Supreme Court held that the Court does not possess the expertise required to determine the matter and the determination has been made by experts appointed by the Government. In **Sher Singh Vs. Union of India**[11], the Court opined that there shall be no judicial review if the policy decision is neither unfair nor *mala fide*. In **A.M.S.A. Karmachari Sangh Vs. State**[12], the Supreme Court has opined that a policy decision shall not normally be questioned in a Court of law and the Court cannot find fault with discrimination based on policy. Keeping these well settled principles in view, it cannot be said that the policy decision taken by the respondents to award contract of transporting essential commodities within a district only to the residents of such district cannot be said to be capricious or arbitrary or whimsical so as to attract

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9. (1996) 9 SCC 709
10. AIR 1990 SC 1277
11. (1995) 6 SCC 515
12. (1996) 9 SCC 186

the wrath of the postulates of Article 14 of the Constitution. The 2nd respondent is an important Corporation established by the State to supervise and regulate the distribution of essential commodities to the beneficiaries under the PDS promptly and regularly without any kind of hindrances and, therefore, such a Corporation should be permitted to have latitude while exercising discretion vested in it in the matter of awarding contract for transportation of the essential commodities and to use the language of the Supreme Court, it should be free to act according to its own light. The Supreme Court in **U.P. Financial Corporation Vs. Naini Oxygen and Acetylene Gas Ltd. and another**[13] has observed thus:

> "However, we cannot lose sight of the fact that the Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such, in the discharge of its functions, it is free to act according to its own light. The views it forms and the decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however more prudent, commercial or businesslike it may be, for the decision of the Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable."

(15) It cannot be said that in view of the condition No.1.6 incorporated in the tender notification, there was no need for the respondents to incorporate the impugned conditions. It is true that the

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13. (1995) 2 SCC 754

condition No.1.6 requires that a contractor shall establish his office within the base depot, but, it needs to be noticed that the right to apply is restricted to the residents of the district concerned not only having regard to their immediate availability within the district but also having regard to their familiarity of the local areas, the approach roads, the institutions and the people to be contacted etc. Be that as it may, it is not for the Court to minutely dissect with mathematical precision the considerations which have gone into the formation of subjective satisfaction of the second respondent-Corporation on the basis of which the impugned conditions are incorporated. The 2nd respondent-Corporation should have necessary latitude to prescribe conditions in the matter of awarding contracts keeping in mind its own experience in the past and the feed-back it has received from its sub-agencies in the field.

(16) In the result and for the foregoing reasons, the writ petition is dismissed, however, with no order as to costs.

Sd/-
Chief Justice

Brajesh*